

**COMPLETED ACQUISITIONS BY BAUER MEDIA GROUP OF CERTAIN LOCAL RADIO STATIONS OF CELADOR ENTERTAINMENT LIMITED, LINGS FM GROUP LIMITED, AND WIRELESS GROUP LIMITED AND OF UKRD GROUP LIMITED**

**Undertakings given by Bauer to the Competition and Markets Authority pursuant to section 82 of the Enterprise Act 2002**

**WHEREAS:**

- (A) Bauer completed the acquisition of Celador, Lings, Wireless and UKRD (together, the “**Acquired Stations**”) by way of either share or asset acquisitions (together, the “**Transactions**”), such that Bauer and the Acquired Stations ceased to be distinct for the purposes of the Enterprise Act 2002 (the “**Act**”);
- (B) On 7 August 2019, the Competition and Markets Authority (“**CMA**”), in the exercise of its duty under section 22(1) of the Act referred the Transactions for further investigation and report by a group of CMA panel members (inquiry group) to decide: (a) whether a relevant merger situation has been created; and (b) if so, whether the creation of that situation has resulted or may be expected to result in a substantial lessening of competition (“**SLC**”) within any market(s) in the United Kingdom for goods or services;
- (C) As set out in the CMA’s report of 12 March 2020 (the “**Report**”), the CMA concluded, *inter alia*, that:
- a. Each of the Transactions constituted a relevant merger situation for the purposes of section 23 of the Act;
  - b. The creation of those situations has resulted or may be expected to result in an SLC in respect of the supply of representation for national advertising to independent radio stations (the “**Representation SLC**”)
  - c. The CMA, having regard to its findings, concluded that a divestiture remedy would not be feasible and concluded that a behavioural remedy which commits Bauer to providing Sales Representation Services to Represented Stations would be an effective and proportionate remedy to the adverse effects arising from the SLC.

**NOW THEREFORE** Bauer, having due regard to the findings in the Report, gives to the CMA on behalf of itself and, where relevant, its Subsidiaries and Affiliates,

the following Final Undertakings pursuant to [section 82](#) of the Act for the purpose of remedying, mitigating or preventing the adverse effects arising from the SLC identified in the Report.

1. **INTERPRETATION**

- 1.1 The schedules form part of these Final Undertakings.
- 1.2 The purpose of these Final Undertakings is to give effect to the Report and they shall be construed accordingly.
- 1.3 Any word or expression used in these Final Undertakings or the recitals to these Final Undertakings shall, unless otherwise defined herein and/or the context otherwise requires, have the same meaning as in the Act or the Report
- 1.4 The Interpretation Act 1978 shall apply to these Final Undertakings as it does to Acts of Parliament.
- 1.5 References in these Final Undertakings to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.
- 1.6 The headings used in these Final Undertakings are for convenience and shall have no legal effect.
- 1.7 References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise.
- 1.8 References to recitals, paragraphs, subparagraphs, appendices, parts and schedules are references to the recitals to, paragraphs and subparagraphs of, appendices, parts and schedules to these Final Undertakings unless otherwise stated.
- 1.9 In these Final Undertakings the word "including" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.
- 1.10 Unless the context requires otherwise, the singular shall include the plural and vice versa and references to persons include bodies of persons whether corporate or incorporate.

1.11 For the purposes of these Final Undertakings:

**“the Act”** means the Enterprise Act 2002;

**“Acquired Stations”** has the meaning given in Recital (A);

**“Additional Obligations”** means those obligations set out in paragraph 5;

**“Advertising”** means all forms of radio advertising, including airtime and sponsorship and promotion and any associated promotional opportunities as the same may develop or evolve from time to time and

**“Advertisement”** means any individual advertisement, sponsorship or promotional opportunity;

**“Advertising Campaign”** means a programme of Advertisements booked together by or on behalf of the same advertiser;

**“Affiliate”** a person (the “first person”) is an affiliate of another person (the “second person”) if they or their respective enterprises would be regarded as being under common control for the purposes of section 26(2) of the Act. For the avoidance of doubt this does not include a situation where the second person does not have a controlling interest in the first person and is able to only materially influence the policy of the first person;

**“Annual MRG Period”** means each full calendar year in which an MRG Station receives Sales Representation Services from Bauer pursuant to these Final Undertakings;

**“Audience Adjuster”** has the meaning given in paragraph 4.4.1;

**“Associated Person”** means a person or persons associated with Bauer within the meaning of section 127(4) of the Act and includes any Subsidiary of such a person or persons;

**“Base Period”** means [✂];

**“Base Period Revenue”** has the meaning given in paragraph 4.2;

**“Bauer”** means Bauer Radio Limited (company number 01394141) or successor entities operating the UK radio business;

**“Bauer’s Board of Directors”** means the board of directors of Bauer from time to time, which at the Commencement Date is comprised of Mr Paul Keenan, Ms Sarah Vickery and Ms Deidre Ford;

**“Bauer National Sales Staff”** has the meaning given in paragraph 6.1;

**“Celador”** means the 16 local radio stations and associated local FM radio licences acquired by Bauer from Celador Entertainment Limited (company number 05679435);

“**CMA**” means the Competition and Markets Authority or any successor body;

“**Commencement Date**” means the date these Final Undertakings are accepted by the CMA;

“**Compliance Director**” means the person appointed pursuant to paragraph 17.3, who shall be a member of the senior management of Bauer;

“**Compliance Report**” has the meaning given in paragraph 16.6;

“**Confidential Information**” means any business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature;

“**Control**” shall be construed in accordance with section 26 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest in, shares of that body corporate amounting to 10 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

“**Dispute Resolution Scheme**” means the scheme set out in Schedule 1;

“**Enterprise**” has the meaning given in section 129(1) of the Act;

“**Excluded Station Group**” means a Group of Interconnected Bodies Corporate which, as at the Commencement Date, includes persons holding a Relevant Licence, but does not include any Third Party Stations;

“**FRS**” means First Radio Sales Limited (company number 02795622);

“**Gross Revenues**” means gross revenues from the sale of Advertising, less media buying agency commission;

“**Group of Interconnected Bodies Corporate**” has the meaning given in section 129(2) of the Act; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

“**Hits Radio Network**” means [✂];

“**Independent Expert**” means the Independent Expert appointed pursuant to paragraph 3.1 of Schedule 1;

“**Interest**” includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders’ meetings but does not include a contract to acquire shares in the future; and for this purpose “an interest in shares” includes an entitlement by a person other than the

registered holder, to exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of such right;

“**IP**” means internet protocol, a means of broadcasting radio station content over the internet;

“**JET**” Means J-ET, the software used by Bauer to book Advertising on its radio stations and to monitor and analyse those bookings (and any successor system);

“**Lincs**” means the nine (9) local radio stations and associated local FM radio licences, an interest in an additional local radio station and associated licences acquired by Bauer from Lincs FM Group Limited (company number 02602875);

“**Market Adjuster**” has the meaning given in paragraph 4.4.2;

“**Minimum Revenue Guarantee**” or “**MRG**” means an annual Gross Revenue guarantee provided by Bauer to MRG Stations as set out in paragraph 4;

“**MRG Stations**” means Third Party Stations and New Entrants;

“**Monitoring Trustee**” means the person appointed pursuant to paragraph 10.4, paragraph 10.5 or paragraph 10.6 to carry out the Monitoring Trustee Functions;

“**Monitoring Trustee Functions**” means the functions set out in paragraph 12;

“**Nation**” means Nation Broadcasting Limited (company number 03707801);

“**New Entrants**” has the meaning given in paragraph 3.1.3;

“**New Stations**” has the meaning given in paragraph 3.1.4;

“**Non Discriminatory Terms**” means terms which are no more and no less favourable than those offered by Bauer to comparable stations pursuant to these Final Undertakings;

“**Octave Audio**” means Octave IP Limited (company number 12395152) a joint venture between Bauer and Wireless Group Media (GB) Limited, active in the sale of Targeted IP Advertising;

“**Ofcom**” means The Office of Communications;

“**RAJAR**” means Radio Joint Audience Research Ltd;

“**RAJAR Data**” means RAJAR’s annually published [✂];

“**Radiocentre**” means the Radio Centre Limited or successor entities;

**“Radiocentre Data”** means annual revenue data published by Radiocentre [✂];

**“Relevant Licence”** means one of the following licences issued by Ofcom: an analogue commercial radio licence, digital sound programme licence, or radio licensable content service licence;

**“Report”** means the CMA’s report under section 22 of the Act dated 12 March 2020 in connection with the Transactions;

**“Represented Stations”** has the meaning given in paragraph 3.1;

**“Sales Representation”** means the provision of Sales Representation Services;

**“Sales Representation Services”** means the negotiation and sale of Advertising to media buying agencies, and advertisers where appropriate, on behalf of a radio station;

**“Subsidiary”** shall be construed in accordance with section 1159 of the Companies Act 2006 (as amended), unless otherwise stated;

**“Targeted IP Advertising”** means Advertising on IP broadcasts by a Represented Station, which is sold separately from Advertising on other broadcasts of the same station and enables advertisers to target particular audience demographics or intentions;

**“Termination Event”** has the meaning given in paragraph 3.9;

**“Third Party Stations”** has the meaning given in paragraph 3.1.1;

**“the Transactions”** has the meaning given in recital (A);

**“UK”** means the United Kingdom of Great Britain and Northern Ireland;

**“UKRD”** means UKRD Group Limited (company number 02725453);

**“Wireless”** means the 12 local radio stations and associated local FM licences acquired by Bauer from Wireless Group Media (GB) Limited (company number 03949697); and

**“Working Day”** means any day of the week other than a Saturday or a Sunday or any day that is a public holiday in England and Wales.

## 2. **COMMENCEMENT**

- 2.1 These Final Undertakings shall come into force on the Commencement Date in accordance with section 82(2) of the Act.

3. **BAUER'S FINAL UNDERTAKINGS TO PROVIDE NATIONAL RADIO ADVERTISING SALES REPRESENTATION**

**Represented Stations**

3.1 Bauer shall offer to provide Sales Representation to:

- 3.1.1 all stations receiving Sales Representation from FRS on the Commencement Date, except any stations which have, on or before the Commencement Date, served notice to terminate their arrangement with FRS (the "**Third Party Stations**");
- 3.1.2 any person (excluding any person forming part of an Excluded Station Group) who, during the term of these Final Undertakings, is awarded a Relevant Licence for an area following the re-advertising of the Relevant Licence for that area by Ofcom in circumstances where the Relevant Licence for that area was held by a Third Party Station at the Commencement Date;
- 3.1.3 any person (excluding any person forming part of an Excluded Station Group) who, during the term of these Final Undertakings, obtains Control over a Relevant Licence, which was held by a Third Party Station as the Commencement Date (together with those stations described in paragraph 3.1.2, "**New Entrants**"); and
- 3.1.4 any new radio station holding a Relevant Licence, which is not a New Entrant (a "**New Station**"), unless that New Station forms part of an Excluded Station Group.

Third Party Stations, New Entrants and New Stations are together the "**Represented Stations**".

**Terms of Representation**

3.2 Bauer shall offer to provide Sales Representation to Represented Stations on the following terms:

- 3.2.1 Third Party Stations: such terms as already agreed between those Third Party Stations and FRS and in effect as at 31 March 2019;
- 3.2.2 New Entrants: either (as applicable):
  - (A) in the case of New Entrants as defined in paragraph 3.1.2 above, such terms as were already in force between Bauer and the previous Relevant Licence holder in respect of that specific Relevant Licence; or
  - (B) in the case of New Entrants as defined in paragraph 3.1.3 above, such terms as were in force between Bauer and the

station being so acquired immediately prior to that specific station's acquisition; and

3.2.3 New Stations: Non Discriminatory Terms.

- 3.3 In relation to paragraph 3.2.3 above, Bauer will specify to the Monitoring Trustee annually the terms which it proposes to offer to New Stations and the reasons why it considers these terms to be Non Discriminatory Terms.
- 3.4 For the avoidance of doubt, Bauer may in addition to the terms described at paragraph 3.2 also offer to Represented Stations new or amended terms and conditions for the provision of the Sales Representation which the Represented Station may elect to accept or reject.
- 3.5 Upon the expiry of any agreement between a Represented Station and Bauer for the provision of Sales Representation, Bauer shall offer to:
- 3.5.1 provide that Represented Station with services in accordance with paragraph 3.2; or
  - 3.5.2 where revised terms have been accepted by a Represented Station pursuant to paragraph 3.4, offer to provide that Represented Station with services at the election of the Represented Station, either:
    - (A) in accordance with paragraph 3.2 above; or
    - (B) the terms agreed pursuant to paragraph 3.4 above.
- 3.6 Where a Represented Station does not accept an offer of representation from Bauer pursuant to paragraphs 3.2 or 3.4 or terminates arrangements with Bauer for the provision of Representation Services but later during the term of these Final Undertakings requests Sales Representation from Bauer, Bauer shall offer to provide that Represented Station with services in accordance with these Final Undertakings.
- 3.7 In addition, the following terms shall apply to all agreements between Bauer and a Represented Station for Sales Representation Services pursuant to these Final Undertakings, unless otherwise agreed between Bauer and the Represented Station pursuant to paragraph 3.4:
- 3.7.1 Bauer shall provide an annual Minimum Revenue Guarantee to all MRG Stations to whom it provides Sales Representation, as set out in paragraph 4;
  - 3.7.2 Bauer will commit to the Additional Obligations set out in paragraph 5; and



- 3.7.3 Bauer shall observe the safeguards in respect of the treatment of Confidential Information set out at paragraph 6.
- 3.8 For the avoidance of doubt:
  - 3.8.1 Bauer shall not require any Represented Station to rebrand their radio station businesses or otherwise source or license content from Bauer as a condition of any offer to provide Sales Representation; and
  - 3.8.2 nothing in these Final Undertakings shall limit the freedom of Represented Stations to obtain additional services from Bauer of their own volition, including content provision or a brand licence, through separate and unconnected agreements.

### **Termination of Representation**

- 3.9 Should any person forming part of an Excluded Station Group, acquire Control over a Represented Station, then that Represented Station shall immediately cease to be a Represented Station for the purposes of these Final Undertakings (a “**Termination Event**”).
- 3.10 Immediately upon a Termination Event, the relevant station will be deemed to have served notice on Bauer to terminate its agreement for Sales Representation Services in accordance with the applicable terms.
- 3.11 For the avoidance of doubt, Bauer will continue to provide Sales Representation to the relevant station on the applicable terms for the duration of the notice period referred to in paragraph 3.10, save that if that station is an MRG Station then the Minimum Revenue Guarantee will cease to apply immediately upon a Termination Event.

## **4. MINIMUM REVENUE GUARANTEE**

- 4.1 Bauer will provide to each MRG Station an annual gross minimum revenue guarantee (“**MRG**”) in accordance with the terms of this paragraph 4. An MRG Station shall be entitled to benefit from the Minimum Revenue Guarantee from the date on which it receives Sales Representation Services from Bauer pursuant to these Final Undertakings.
- 4.2 The MRG entitles the MRG Stations to receive, in each Annual MRG Period, Gross Revenues equivalent to its average annual Gross Revenue from FRS in the Base Period (“**Base Period Revenue**”) subject to the adjustments set out in paragraphs 4.4 – 4.11 below.

- 4.3 Within 2 months of the date on which each MRG Station starts receiving Sales Representation Services from Bauer pursuant to these Final Undertakings, Bauer shall provide a statement to that MRG Station setting out that MRG Station's Base Period Revenue and the basis of its calculation.

**Adjustments to the MRG**

Audience Adjuster and Market Adjuster

- 4.4 The Base Period Revenue will be adjusted to take account of:
  - 4.4.1 the percentage change in an MRG Station's UK annual listening hours, as calculated by reference to RAJAR Data (the "**Audience Adjuster**"); and
  - 4.4.2 the percentage change in the value of UK annual national commercial radio revenue, as calculated by reference to Radiocentre Data (the "**Market Adjuster**").

- 4.5 The Audience Adjuster and the Market Adjuster would be applied using the following formula to calculate the MRG for each Annual MRG Period (referred to as year 'n'):

[✂]

- 4.6 [✂].

[✂]

- 4.7 [✂].

[✂]

- 4.8 [✂].

- 4.9 [✂].

- 4.10 [✂]:

- 4.10.1 [✂]; and

- 4.10.2 [✂].

**Payments under the MRG**

- 4.11 Before making any MRG Payments, Bauer shall be entitled to make deductions from the Gross Revenues guaranteed including in respect of

sales commission to the extent permitted under the terms of the provision of Sales Representation Services.

4.12 [X] each year, Bauer shall provide a statement to each MRG Station which shall contain at least the following:

4.12.1 [X];

4.12.2 [X];

4.12.3 [X];

4.12.4 [X];

4.12.5 [X]; and

4.12.6 [X].

4.13 In the event that any payments are due from Bauer to an MRG Station under the MRG, they shall be made by [X].

## 5. **ADDITIONAL OBLIGATIONS**

5.1 In relation to Sales Representation provided to each Represented Station unless agreed otherwise pursuant to paragraph 3.4, Bauer will commit:

5.1.1 to provide a professional sales service and use all reasonable endeavours to promote an awareness of the Represented Station to media buying agencies on the same basis in all material respects as for Bauer's own stations, including:

(A) representing the Represented Stations utilising the same technologies and methodologies as may be used from time to time in the sale of Advertising [X]; and

(B) representing the Represented Stations in respect of new distribution platforms for Advertising as may be used from time to time for the sale of national Advertising [X];

5.1.2 to negotiate and conclude sales contracts on behalf of the Represented Stations in good faith and acting in their commercial interests;

5.1.3 to use all reasonable commercial endeavours to negotiate the best price for each sale of national Advertising taking account of the marketplace and agreement between Bauer and the Represented Station as to how the Advertising is to be sold;

- 5.1.4 to promptly notify the Represented Station of any material concerns that it may have regarding the identity of an advertiser or subject matter of a campaign on the same basis as for Bauer's own stations; and
- 5.1.5 to act in good faith and in a timely fashion in relation to the performance of all of its obligations under the representation agreement and comply with all reasonable instructions and requests of the Represented Station.
- 5.2 Bauer will ensure that [✂] does not discriminate between the sales of Advertising on Represented Stations and on Bauer stations.
- 5.3 Bauer will continue to make available the FRS station groupings as they exist at the Commencement Date on the JET system.
- 5.4 Bauer will hold an annual meeting to which all Represented Stations will be invited. The purpose of this meeting will to be to discuss these Final Undertakings and Bauer's adherence to them. The first such meeting shall take place within six (6) months of the Commencement Date, and shall be held annually thereafter. In relation to this meeting, Bauer shall ensure that:
  - 5.4.1 the Compliance Director attends the meeting;
  - 5.4.2 every care is taken to ensure all attendees are aware of their obligations under all applicable competition law; and
  - 5.4.3 minutes of the meeting are provided to the Monitoring Trustee within 14 Working Days of the meeting.
- 5.5 Subject to the agreement of each Represented Station, Bauer would [✂].

## 6. PROTECTION OF CONFIDENTIAL INFORMATION

- 6.1 Bauer shall adopt appropriate safeguards to ensure that Confidential Information relating to the Represented Stations, including but not limited to Confidential Information relating to Advertising sales activities of the Represented Stations, is disclosed solely to those Bauer employees responsible for the implementation of and compliance with these Final Undertakings and the provision and management of Sales Representation Services and associated support teams ("**Bauer National Sales Staff**").
- 6.2 Following consultation with the Monitoring Trustee, Bauer shall implement the following safeguards in respect of Confidential Information relating to the Represented Stations:

- 6.2.1 the Bauer National Sales Staff will sign confidentiality undertakings, in a form approved by the CMA, which shall designate the permitted uses for Confidential Information and prohibit the disclosure of Confidential Information by Bauer National Sales Staff to Bauer employees who are not part of the Bauer National Sales Staff;
- 6.2.2 the Bauer National Sales Staff will keep safe and maintain separate physical storage of the Confidential Information and ensure electronic files and computers are password protected; and
- 6.2.3 Bauer shall ensure that only Bauer National Sales Staff can access Confidential Information through the implementation of appropriate IT firewalls and promptly report any breaches to the Compliance Director upon becoming aware of such breach.

7. [✂]

7.1 [✂].

7.2 [✂].

[✂]

7.3 [✂].

7.4 [✂].

## 8. **DURATION**

8.1 These Final Undertakings will remain in force for a period of 10 years, subject to section 92 of the Act commencing on the Commencement Date.

9. [✂]

9.1 [✂].

9.2 [✂].

## 10. **APPOINTMENT OF A MONITORING TRUSTEE**

10.1 Bauer shall propose to the CMA for approval:

10.1.1 the names of at least two individuals to exercise the Monitoring Trustee Functions; and

10.1.2 the full terms of a mandate in accordance with which the Monitoring Trustee shall carry out the Monitoring Trustee Functions.

- 10.2 Bauer and/or any individuals nominated pursuant to paragraph 10.1 shall satisfy the CMA that, save as required or permitted by the CMA:
- 10.2.1 such nominated individuals have the necessary qualifications to carry out their mandates, and are employees or partners of a firm with an established reputation either nationwide or in a substantial part of the UK or in an EU member state;
  - 10.2.2 such nominated individuals are each independent of Bauer and of the Group of Interconnected Bodies Corporate to which Bauer belongs and of any Associated Person or Affiliate of Bauer, and, in the reasonable opinion of Bauer, are appropriate to be appointed as Monitoring Trustee; and
  - 10.2.3 such nominated individuals neither are, nor are likely to become, exposed, either directly or indirectly, to a conflict of interest that impairs or may be likely to impair their objectivity or independence in discharging the Monitoring Trustee Functions.
- 10.3 Within 5 Working Days of the CMA approving, at its discretion, one or more of the persons nominated by Bauer and their proposed mandates pursuant to paragraph 10.1 above, and subject to any modifications the CMA deems necessary for the Monitoring Trustee to carry out the Monitoring Trustee Functions, Bauer shall use its best endeavours to appoint from the persons so approved one person to carry out the Monitoring Trustee Functions in accordance with the mandate approved by the CMA pursuant to paragraph 10.1 above.
- 10.4 In the event that:
- 10.4.1 Bauer fails to propose any person or persons in accordance with paragraph 10.1 above; or
  - 10.4.2 none of the persons proposed by Bauer pursuant to paragraph 10.1 is approved by the CMA; or
  - 10.4.3 Bauer is unable for any reason to appoint within the time limit stipulated in paragraph 10.3 above any such person following approval by the CMA,

Bauer shall use its best endeavours to appoint from persons nominated by the CMA one person to carry out the Monitoring Trustee Functions on the terms of a mandate approved by the CMA. Bauer shall use its best endeavours to make such appointment within 5 Working Days of receiving the nominations from the CMA.

- 10.5 The appointment of the Monitoring Trustee pursuant to paragraph 10.3 or 10.4 above shall be irrevocable unless:
- 10.5.1 a conflict of interest that impairs or may be likely to impair the objectivity or independence of the Monitoring Trustee in discharging the Monitoring Trustee Functions arises;
  - 10.5.2 the Monitoring Trustee ceases to perform the Monitoring Trustee Functions; or
  - 10.5.3 the CMA is otherwise satisfied that there is good cause for the appointment to be terminated in advance of the satisfactory fulfilment of the Monitoring Trustee Functions.
- 10.6 In the event that the appointment of the Monitoring Trustee is terminated in accordance with paragraph 10.5 above, Bauer shall, if requested to do so in writing by the CMA, use its best endeavours to appoint from persons nominated by the CMA one person to carry out the Monitoring Trustee Functions in accordance with such mandate as is approved by the CMA. Bauer shall use its best endeavours to make such appointment within 7 Working Days of receiving the nominations from the CMA. Where required by the CMA, the outgoing Monitoring Trustee shall continue as Monitoring Trustee until a new Monitoring Trustee is in place and a full handover of all relevant information has taken place.

## 11. THE MANDATE

- 11.1 The terms of the mandate proposed by Bauer pursuant to paragraph 10.1 above shall, as a minimum, contain all provisions necessary to enable the Monitoring Trustee to carry out the Monitoring Trustee Functions including, without limitation to the generality of this paragraph:
- 11.1.1 a mandate to monitor compliance by Bauer with its obligations under these Final Undertakings and with any orders and/or directions given to Bauer by the CMA in relation to Bauer's obligations under these Final Undertakings;
  - 11.1.2 a mandate to take any other steps necessary for, or incidental to, the Monitoring Trustee's mandate under paragraph 11.1.1 above;
  - 11.1.3 a mandate to comply with any orders and/or directions given by the CMA; and
  - 11.1.4 a mandate to appoint at Bauer's expense such advisers as the CMA and/or the Monitoring Trustee reasonably considers

necessary or appropriate in connection with the performance of the Monitoring Trustee Functions.

**12. FUNCTIONS OF THE MONITORING TRUSTEE**

- 12.1 The Monitoring Trustee shall monitor and seek to ensure Bauer's compliance with its obligations under these Final Undertakings and shall promptly take such measures as it considers necessary to ensure such compliance, as well as reporting in writing to the CMA, if the Monitoring Trustee concludes on reasonable grounds that Bauer is failing or will fail to comply with such obligations.
- 12.2 The CMA may give written directions to Bauer to take such steps as may be specified or described in the directions for the purpose of securing Bauer's compliance with its obligations under these Final Undertakings or enabling the Monitoring Trustee to carry out the Monitoring Trustee Functions.
- 12.3 The Monitoring Trustee shall, as soon as reasonably practicable, comply at all times with any reasonable instructions or written directions made by the CMA for the purposes of carrying out or securing compliance with the Final Undertakings (or any matter incidental thereto) and shall provide to the CMA such information and reports in relation to the carrying out of the Monitoring Trustee Functions as the CMA may require, including providing an annual report to the CMA within 2 months after receiving Bauer's annual Compliance Report.
- 12.4 The Monitoring Trustee shall promptly report in writing to the CMA if the Monitoring Trustee concludes on reasonable grounds that Bauer is failing or will fail to comply with any of its obligations under these Final Undertakings.
- 12.5 For the purpose of fulfilling the Monitoring Trustee Functions, the Monitoring Trustee shall not be bound by instructions of Bauer nor shall the Monitoring Trustee Functions be extended or varied in any way by Bauer save with the prior express written consent of the CMA.

**13. OBLIGATIONS OF BAUER FOLLOWING APPOINTMENT OF THE MONITORING TRUSTEE**

- 13.1 Bauer shall not give any instruction or request to the Monitoring Trustee which conflicts with the Monitoring Trustee Functions.
- 13.2 Bauer shall take all such steps as are reasonably necessary to enable the Monitoring Trustee to carry out the Monitoring Trustee Functions, including but not limited to:



13.2.1 complying with such written directions as the Monitoring Trustee may from time to time give pursuant to paragraph 12.2 above; and

13.2.2 providing the Monitoring Trustee with all such assistance and information as it may reasonably require in carrying out the Monitoring Trustee Functions.

**14. REMUNERATION OF THE MONITORING TRUSTEE**

14.1 Bauer shall pay the Monitoring Trustee a reasonable remuneration for the services it provides in carrying out the Monitoring Trustee Functions, and shall pay the Monitoring Trustee in a way that does not impede the independent and effective fulfilment of the Monitoring Trustee Functions, which shall be set out in the Monitoring Trustee's mandate referred to in paragraph 11 above.

**15. DISPUTE RESOLUTION**

**Appointment of an Independent Expert**

15.1 Bauer shall appoint an Independent Expert to carry out the functions in paragraphs 5 and 6 of Schedule 1 for the term of these Final Undertakings.

15.2 Bauer shall inform the CMA as soon as is reasonably practicable and in any event by no later than 5 Working Days after the Commencement Date of the identity of the Independent Expert that it proposes to appoint and provide the CMA with draft terms and conditions of appointment. Once the Independent Expert has been approved by the CMA and appointed, Bauer shall provide the CMA with a copy of the agreed terms and conditions of appointment.

15.3 The Independent Expert must possess relevant industry knowledge. The Independent Expert must be under an obligation to carry out its functions to the best of its abilities. The Independent Expert must neither have nor become exposed to a conflict of interest that impairs the Independent Expert's objectivity and independence in discharging the functions under these Final Undertakings.

15.4 Bauer shall remunerate and reimburse the Independent Expert for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the Independent Expert's independence or ability to effectively and properly carry out its functions.

- 15.5 Bauer shall advise the CMA promptly if the Independent Expert approved by the CMA is unable or unwilling to continue to discharge its functions in accordance with these Final Undertakings.

**Dispute Resolution Scheme**

- 15.6 Bauer undertakes to comply with and fulfil any obligations placed upon it under the Dispute Resolution Scheme as set out in Schedule 1.
- 15.7 Bauer shall at all times maintain an offer for any disputes with a Represented Station regarding the terms of these Final Undertakings to be referred to an Independent Expert in accordance with the Dispute Resolution Scheme.
- 15.8 Bauer shall participate in the Dispute Resolution Scheme where any Represented Station accepts the offer set out in paragraph 15.7 above and agrees to be bound by the Dispute Resolution Scheme.
- 15.9 If at any stage during the term of these Final Undertakings the CMA considers that a change to the Dispute Resolution Scheme is necessary to ensure the effective operation of these Final Undertakings and/or for the effective discharge of the Independent Experts' functions, the CMA, having regard to any representations made it to by the Independent Expert, Bauer or any Represented station:
- 15.9.1 shall advise Bauer in writing of the proposed changes to the Dispute Resolution Scheme;
  - 15.9.2 shall allow Bauer 10 Working Days to raise objections to the change proposed; and
  - 15.9.3 shall take account of any objections raised by Bauer before directing any change to the Dispute Resolution Scheme,
- and Bauer undertakes that it shall make such changes to the Dispute Resolution Scheme as the CMA shall direct.
- 15.10 These Final Undertakings, including the Dispute Resolution Scheme, shall operate without prejudice to the statutory rights of any person under the Act, the Competition Act 1998 and the Enterprise and Regulatory Reform Act 2013, each as amended from time to time.

16. **COMPLIANCE**

- 16.1 Bauer, and all members of its Group of Interconnected Bodies Corporate, further undertake that as of the Commencement Date they shall take no action which frustrates compliance with these Final Undertakings.
- 16.2 Bauer shall procure that any member of the same Group of Interconnected Bodies Corporate as Bauer complies with these Final Undertakings as if it had given them and actions and omissions of the members of the same Group of Interconnected Bodies Corporate as Bauer shall be attributed to Bauer for the purposes of these Final Undertakings.
- 16.3 Where any Affiliate of Bauer is not a member of the same Group of Interconnected Bodies Corporate as Bauer, Bauer shall use reasonable endeavours to procure that any such Affiliate shall comply with these Final Undertakings as if it had given them.
- 16.4 Bauer shall comply promptly with such written directions as the CMA may from time to time give:
- 16.4.1 to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these Final Undertakings; or
  - 16.4.2 to do or refrain from doing anything so specified or described which it might be required by these Final Undertakings to do or to refrain from doing.
- 16.5 Bauer shall co-operate fully with the CMA when the CMA is:
- 16.5.1 monitoring compliance with the provisions of these Final Undertakings; and
  - 16.5.2 investigating potential breaches of the provisions of these Final Undertakings.
- 16.6 Bauer shall deliver an annual report to the Monitoring Trustee (the “**Compliance Report**”) by 31 March during each year in which these Final Undertakings remain in force (or, where 31 March in a given year is not a Working Day, the next Working Day), with the first annual report to be delivered by 31 March 2021. Each such report shall have been approved by Bauer’s Board of Directors and shall include a detailed and accurate account of:
- 16.6.1 the steps taken to ensure compliance with these Final Undertakings;

- 16.6.2 instances where a breach or potential breach of these Final Undertakings has been identified and any steps taken to rectify it;
  - 16.6.3 whether any matters were referred to the Independent Expert for adjudication pursuant to paragraphs 5 and 6 of Schedule 1, and, subject to the terms of Schedule 1, a summary of how these matters were resolved;
  - 16.6.4 how the report was compiled; and
  - 16.6.5 in addition, the report shall include copies of the statements referred to in paragraph 4.12.
17. **APPOINTMENT OF A COMPLIANCE DIRECTOR** Bauer shall appoint a member of the senior management of its UK business as Compliance Director for the purposes of these Final Undertakings. Bauer shall inform the CMA within 5 Working Days after commencement of these Final Undertakings of the identity of the Compliance Director and the contact details.
- 17.2 Bauer undertakes to advise the CMA promptly if the Compliance Director ceases or will cease to perform the functions. Bauer shall inform the CMA of the identity of a replacement as soon as is reasonably practicable and in any event no later than 7 Working Days after advising the CMA the Compliance Director has ceased or intends to cease to perform the functions.
- 17.3 The Compliance Director shall have primary responsibility for:
- 17.3.1 monitoring compliance with the terms of these Final Undertakings;
  - 17.3.2 facilitating and respond to any requests for information from the Independent Expert, the Monitoring Trustee or the CMA;
  - 17.3.3 taking steps to identify and rectify any instance of non-compliance and keeping a written record of same;
  - 17.3.4 advising the Monitoring Trustee promptly of all instances of non-compliance and steps to rectify any instances of non-compliance;
  - 17.3.5 advising the Monitoring Trustee and Independent Expert promptly if a Represented Station issues an Adjudication Notice pursuant to paragraph 5 of Schedule 1;
  - 17.3.6 attending the annual meeting of stakeholders as provided for in paragraph 5.4;
  - 17.3.7 maintaining staff awareness within Bauer of the requirements of these Final Undertakings; and,

17.3.8 preparing the annual Compliance Report.

17.4 The Compliance Director shall on receipt of a Request implement the Voluntary Resolution Procedure set out in Schedule 1.

17.5 Bauer undertakes that, notwithstanding paragraph 16.6.2, should it at any time become aware of any breach of any provision of these Final Undertakings it shall inform the CMA of the breach, the circumstances in which it arose in writing within 7 Working Days following the date on which its Compliance Director became aware of the breach.

## **18 VARIATIONS TO FINAL UNDERTAKINGS**

18.1 The terms of these Final Undertakings may be varied with the prior written consent of the CMA in accordance with [sections 82\(2\)](#) and [82\(5\)](#) of the Act.

18.2 Where a request for consent to vary these Final Undertakings is made to the CMA, the CMA will consider any such request in light of the Report and will respond in writing as soon as is reasonably practicable having regard to the nature of the request and to its statutory duties.

18.3 The consent of the CMA shall not be unreasonably withheld.

## **19 GENERAL OBLIGATIONS TO PROVIDE INFORMATION TO THE CMA**

19.1 Bauer undertakes that it shall promptly provide to the CMA such information and such co-operation as the CMA may reasonably require for the purpose of performing any of its functions under these Final Undertakings or under sections [82](#), [83](#), [93\(6\)](#) and 94 of the Act.

19.2 Where any person, including a Monitoring Trustee must provide information to the CMA under or in connection with these Final Undertakings, whether in the form of any notice, application, report or otherwise, Bauer undertakes that it will take reasonable steps within its power to procure that that person shall hold all information provided to it as confidential and shall not disclose any business-sensitive information of Bauer to any person other than to the CMA, without the prior written consent of both the CMA and Bauer.

## **20. EXTENSION OF TIME LIMITS**

20.1 The CMA may, in response to a written request from Bauer, or otherwise at its own discretion, grant an extension to any time period referred to in these Final Undertakings.

**21. SERVICE**

21.1 Service of any document connected with these Final Undertakings (including any document of any kind which falls to be served on or sent to Bauer, or any of its Subsidiaries in connection with any proceedings in Courts in the UK, orders, requests, notifications or other communications connected with these Final Undertakings) shall be effected by delivering the document to Bauer, whose address for service is General Counsel, Bauer, Academic House, 20-24 Oval Rd, London NW1 7DJ.

21.2 Any communication from Bauer to the CMA under these Final Undertakings shall be addressed to Manager, Market and Mergers Remedies Monitoring, Competition and Markets Authority, The Cabot, 25 Cabot Square, London, E14 4QZ or such other person or address as the CMA may direct in writing.

**22. EFFECT OF INVALIDITY**

22.1 Should any provision of these Final Undertakings be contrary to law or invalid for any reason, Bauer undertakes to continue to observe the remaining provisions.

**23. GOVERNING LAW**

23.1 Bauer recognises and acknowledges that these Final Undertakings shall be governed and construed in all respects in accordance with English law.

23.2 In the event that a dispute arises concerning these Final Undertakings, Bauer undertakes to submit to the courts of England and Wales.

**24. TERMINATION**

24.1 Bauer recognises and acknowledges that these Final Undertakings shall be in force until such time as they are varied, released or superseded under the Act.

24.2 Bauer recognises and acknowledges that the variation, release or supersession of these Final Undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

**FOR AND ON BEHALF OF BAUER**

Signature

Name

Title

Date

**DATE ACCEPTED BY THE CMA:**

## SCHEDULE 1 – DISPUTE RESOLUTION SCHEME

### 1. INTERPRETATION

- 1.1 Except where the context otherwise requires or as otherwise defined herein, words and expressions used in this Schedule shall have the meaning as in the main body of these Final Undertakings.
- 1.2 A reference in this Schedule to a paragraph is to a paragraph of this Schedule unless otherwise stated.

### 2. SCOPE

- 2.1 This Dispute Resolution Scheme shall apply in the circumstances set out in paragraphs 15.6 to 15.10 of the Final Undertakings.

### 3. APPOINTMENT OF INDEPENDENT EXPERT

- 3.1 Bauer shall appoint an Independent Expert in accordance with paragraph 15 of these Final Undertakings.

### 4. VOLUNTARY RESOLUTION

- 4.1 If a Represented Station wishes to avail itself of the Dispute Resolution Scheme it will send a written request to the Compliance Director (the "**Request**") setting out in detail the reasons for its belief that Bauer has not properly observed the Final Undertakings referred to above.
- 4.2 By sending a Request, the Represented Station is deemed to have accepted Bauer's offer as set out in paragraph 15.7 of the Final Undertakings and to have agreed to be bound by the Dispute Resolution Scheme. Bauer and the relevant Represented Station are referred to as the "**Parties**" for the purpose of this Schedule.
- 4.3 On receipt of a Request, the Compliance Director shall implement the Voluntary Resolution Procedure set out in this paragraph 4.
- 4.4 Within 10 Working Days following receipt of the Request the Compliance Director shall provide a written response to the Represented Station (the "**Bauer Response**").
- 4.5 Within a reasonable period, not exceeding 20 Working Days from receipt of the Bauer Response (the "**Voluntary Resolution Period**"), the Parties will use reasonable efforts to resolve through cooperation and consultation differences of opinion and settle the dispute underlying the Request. In the



case of Bauer, the Compliance Director will ensure that this obligation to use reasonable efforts is complied with.

- 4.6 The Parties may by mutual written agreement choose to extend the Voluntary Resolution Period once, by no more than 5 Working Days, or waive the Voluntary Resolution Period and proceed immediately to the adjudication process set out below.
- 4.7 If the Parties fail to resolve the dispute during the Voluntary Resolution Period, or agree to waive the Voluntary Resolution Period, then the Represented Station may issue an Adjudication Notice to Bauer (and the Compliance Director will provide a copy to the Monitoring Trustee), requiring that the dispute be referred to the Independent Expert.

## 5. **ADJUDICATION NOTICE**

- 5.1 The Adjudication Notice must be issued to Bauer, and to the Independent Expert (with a copy to the Monitoring Trustee) no more than 5 Working Days after the end of the Voluntary Resolution Period or the agreement to waive the Voluntary Resolution Period.
- 5.2 The Adjudication Notice must set out briefly the following:
  - 5.2.1 the issues in dispute for which adjudication is required;
  - 5.2.2 the material facts and any documentary or other evidence relied upon; and
  - 5.2.3 the relief sought, including (if relevant) the amount of any money claimed.
- 5.3 The Independent Expert shall confirm within 3 Working Days if, in its view, the Adjudication Notice is incomplete in any material respect and/or discloses no reasonable grounds for it to act and/or is otherwise abusive. The Independent Expert will specify the time period within which a revised Adjudication Notice is to be provided. It lies within the sole discretion of the Independent Expert to determine whether an Adjudication Notice is complete.
- 5.4 Bauer will provide a written response to the complete Adjudication Notice within 10 Working Days of confirmation by the Independent Expert that the Adjudication Notice is complete (the "**Adjudication Notice Response**"). The Adjudication Notice Response should include the material facts and any documentary or other evidence relied upon by Bauer.

**6. ADJUDICATION PROCEDURE**

- 6.1 The purpose of the Adjudication Procedure is to decide disputes between the Parties as rapidly and economically as is reasonably possible.
- 6.2 The process shall be conducted in private and shall be confidential.
- 6.3 The Monitoring Trustee may, on request, have access to any materials relevant to the Adjudication Procedure.
- 6.4 The Independent Expert shall:
  - 6.4.1 act fairly and impartially, making use of its specialist knowledge;
  - 6.4.2 avoid incurring unnecessary expense;
  - 6.4.3 determine the procedure and requirements to be followed by the parties, giving each party a reasonable opportunity in the light of the overall timetable to put its case and deal with that of the other party;
  - 6.4.4 determine the dispute based on the written materials submitted by the parties and without an oral hearing;
  - 6.4.5 take into account any submissions that the Monitoring Trustee might choose to provide;
  - 6.4.6 unless the parties have otherwise resolved the dispute, provide a written decision on the dispute as set out in the Adjudication Notice within 30 Working Days of receipt of a complete Adjudication Notice, specifying what action (if any) should be taken by either or both parties to give effect to that decision; and
  - 6.4.7 provide a copy of its decision to the Monitoring Trustee.
- 6.5 The Parties shall:
  - 6.5.1 provide the Independent Expert with such information as the Independent Expert reasonably requires to determine the matters referred to it;
  - 6.5.2 comply with such directions or requests as the Independent Expert may reasonably make; and
  - 6.5.3 comply with the decision of the Independent Expert, including directions issued by the Independent Expert to resolve the dispute at issue.
- 6.6 Each Party will bear its own costs of the Adjudication Procedure. The costs of the Independent Expert shall be borne by Bauer save in exceptional circumstances where the Independent Expert may find that as a result of

the Represented Station's conduct some or all its costs shall be borne by the Represented Station.

- 6.7 The Independent Expert's decision shall be final and binding.
- 6.8 The Independent Expert shall provide a non-confidential summary of any final decision it reaches to the Monitoring Trustee. Subject to paragraph 6.2 of this Schedule 1, the Monitoring Trustee may then provide this summary to the Represented Stations.
- 6.9 The Independent Expert will not be liable for anything done or omitted to be done in the discharge or purported discharge of its appointment unless the act or omission is shown to be fraudulent or in bad faith.